

**Draft Summary of the Plenary Group Meeting
Oroville Facilities Relicensing (FERC Project No. 2100)
October 22, 2002**

The Department of Water Resources hosted the Plenary Group meeting on October 22, 2002 in Oroville. A summary of the discussions, decisions made, and action items are provided below. This summary is not intended to be a transcript, analysis of the meeting, or to indicate agreement or disagreement with any of the items summarized, except where expressly stated. The intent is to present an informational summary for interested parties who could not attend the meeting. The following documents are provided:

Attachment 1	Meeting Agenda
Attachment 2	Meeting Attendees
Attachment 3	Flip Chart Notes
Attachment 4	Process Update
Attachment 5	Meeting Abstracts
Attachment 6	Project Operations Presentation
Attachment 7	Scoping Process Presentation
Attachment 8	Project Description
Attachment 9	Proposed Actions and Purpose and Needs Statement
Attachment 10	Protection, Mitigation, and Enhancement Screening Criteria
Attachment 11	Alternatives to be Considered
Attachment 12	Introduction to Negotiation Framework
Attachment 13	Baseline Under the Federal Power Act and Other Laws
Attachment 14	Baseline Definitions

Welcome and Introductions

Attendees were welcomed to the Plenary Group meeting and objectives were discussed. The meeting agenda and list of meeting attendees with their affiliations are appended to this summary as Attachments 1 and 2, respectively. Meeting flip chart notes are included as Attachment 3.

Eric Theiss of National Marine Fisheries Services asked for an update on Study Plan F2. Eric also requested an update regarding his October 14, 2002 e-mail. Rick Ramirez with DWR asked if rather than take time during this meeting and since Steve Ford, DWR Resource Area Manager for the Environmental Work Group was not in attendance, these issues could be covered at the Joint Engineering & Operations/Environmental meeting scheduled for Wednesday, October 23, 2002. Eric agreed, but then asked if the distribution date of October 31, 2002 for the F2 Interim Report was correct. Rick Ramirez stated that DWR was comfortable with the October 31 distribution date. Eric also raised the issue of meeting cancellations and asked who decided to cancel the October EWG meeting. The Facilitator explained that the entire EWG decided to cancel the meeting. Rick Ramirez suggested that Eric talk to the Resource Area Manager for the EWG if he wants more detail as to why the meeting was cancelled. Roger Masuda representing Butte County asked which studies would have results available in December. The Facilitator responded that a query could be made of the database and results distributed to the Plenary Group.

Patrick Porgans, representing JEM Farms, reminded the Plenary Group that he has some issues he would like placed on a future agenda and said that he would provide the Facilitator with specific information. Michael Pierce, representing the Butte County Relicensing Team, asked if "Next Steps" is the place to talk about issues Butte County would like placed on future meeting agendas. Rick Ramirez referred the participants to Section IV.E. in the Process Protocols that outlines the steps to take to have an item added to a meeting agenda. Wade Hough, Oroville Recreation Advisory Committee, stated he requested an item be placed on an agenda for one of the

Recreation and Socioeconomic Work Group meetings and had sent an e-mail to the Facilitator but the item was never scheduled. The Facilitator did not recall receiving such a request and asked to discuss the matter further with Wade during the first break.

Process Update

Where We Are in the Process

Rick Ramirez gave a presentation discussing where we are in the FERC relicensing process. His presentation is included as Attachment 4 to this summary. Rick also introduced Mark Andersen as a new member of DWR's relicensing team. Mark is the new Oroville Facilities Relicensing Program Lead and replaces Len Marino who formerly held that position.

A notebook containing copies of all of the presentation slides for this meeting was distributed to attendees. Rick informed the Plenary Group that Scoping Document 1 (SD1) has been finalized and published, discussions of potential Protection, Mitigation and Enhancement (PM&E) measures were starting in the work groups, and the next step for the Plenary Group was to begin development of a framework for settlement discussions. Rick also reported that of the 71 total study plans approved by the Collaborative, 54 study plans have been initiated, 16 study plans have not yet been initiated, and 1 study plan, SP-E1.6 is on hold. Rick also mentioned that the Draft Application is scheduled for completion in April 2004.

Roger Masuda, representing Butte County, asked about the status of Study Plan F9. The Facilitator said it would be discussed later in the meeting under Item IX - Update on F9 NMFS Issue Resolution Process.

The Facilitator reminded the Plenary Group that abstracts covering the Work Group meetings held since the last Plenary Group meeting are provided with the Plenary Group meeting agenda and full summaries of these meetings are available on the Relicensing web site. The abstracts are provided as Attachment 5 to this summary.

Action Item – September 24, 2002 Meeting

The Facilitator reminded meeting participants that there were no action items from the September 2002 meeting.

Project Operations Presentation

Curtis Creel, Chief of DWR's State Water Project Operations Branch, gave a presentation on the general strategy of Oroville Facilities operations. Curtis' presentation covered Oroville storage targets, State Water Project allocations, operational strategy, and explained that water is released from Lake Oroville primarily to meet local water supply demands, instream requirements, and downstream requirements, for flood control, and to support State Water Project water supply obligations. His presentation is included as Attachment 6 to this summary. Several participants asked questions regarding power contracts and how they affect operations. Curtis stated that power is considered secondary to water supply and that Feather River contracts are "senior" to State Water Contractors, as are in-basin uses and Delta requirements.

Patrick Porgans noted that Oroville Reservoir seems to take a disproportional hit with more releases than other reservoirs during drier years. He asked if this would become more severe in the future as increased demands are made on the SWP. Curtis agreed that the project would become more challenged in the future with increasing demands for water in California. Wade Hough asked why Lake Oroville drew down so fast compared to other reservoirs this year and asked if there was a way to 'share the pain' with other reservoirs. Curtis replied that for the last three water years the Feather River watershed received less water than neighboring watersheds

such as the Lake Shasta basin. For example, while the past year was classified as normal on a statewide level, Oroville inflows were 45% below normal. Curtis also explained that DWR shares in-basin responsibilities and has a contractual agreement with the Bureau of Reclamation to meet in-basin demands.

The participants discussed energy production from Oroville Facilities. Richard Roos-Collins, representing American Rivers, asked if as part of their power contracts with DWR Southern California Edison Company (SCE) had the right to request water releases for the purpose of generating electricity. Curtis stated that SCE does not have authority to make such a request and water is never stored or released from Lake Oroville solely for energy production. Mike Mainz with California Department of Fish and Game asked if power contracts specify the amount of power to be purchased or just to whom it will be sold. Curtis responded that the contracts with SCE do not identify a specific amount of energy but rather are based on a percentage of capacity available to SCE during a specific time of year. Roger Masuda asked where on-peak energy goes and if DWR sells on the open market? Curtis stated that the on-peak energy generated is used to meet SWP energy demands. Roger commented that this process is focused on relicensing a hydroelectric power facility not a water supply facility and asked that Oroville Facilities' annual generating average and value of the power be provided to the Collaborative. Ken Kules representing Metropolitan Water District (MWD) stated that one of the Engineering & Operations Work Group study plans is addressing Roger's questions per FERC requirements. Nan Nalder added that the annual cost and annual value of generation would be included in an exhibit in the application.

Gary Taylor, representing the U.S. Fish and Wildlife Service, asked if the DWR/SCE contract negotiations were considered to be outside of the Oroville Facilities relicensing process. Ward Tabor, DWR's Assistant Chief Counsel, explained that he sees a relationship but felt it was not directly part of the process. Gary said it seemed an important part of relicensing. Ward said the negotiations are solely between DWR and SCE and that while the negotiations are confidential, the final contract would be publicly available. Sharon Stohrer, State Water Resources Control Board, suggested the Collaborative might be interested in the DWR/SCE contract negotiation with regard to potential conflicts between terms and conditions negotiated in the Alternative Licensing Procedures but added that the SWRCB cannot provide draft conditions until the final application and environmental documents are completed which will occur after the SCE contract expires and is renegotiated.

Project Description and Purpose and Need Statements/Environmental Baseline Discussion

Ward Tabor led a discussion about Project Description, Purpose and Need Statements, and Environmental Baseline. Ward reminded participants that many items he covered would be revisited in the next few Plenary Group meetings. Ward's presentation is included as Attachments 8 through 11, 13 and 14 to this summary. He explained that the Project Description for the National Environmental Protection Act (NEPA) Scoping Document 2 (SD2) and Amended California Environmental Quality Act (CEQA) Notice of Preparation would be the same as found in SD1. Ward also reviewed three different alternatives DWR expects to consider during development of the environmental document that will accompany the FERC application. Ward described the No-Action Alternative, Settlement/Comprehensive Resource Alternative, and a Mitigation Alternative that would be developed if a settlement is not reached by the Collaborative. Ward stated that DWR's preferred alternative would be the Settlement/Comprehensive Resource Alternative that would serve as the basis for the new license and other regulatory approvals necessary for the new license. He described this alternative as intending to resolve some or all of the ongoing disputes that arose from the original license and said it may include, on a case-by-case basis, resolution of disputes that are related to future operation of the Oroville Facilities but that may be outside of FERC's jurisdiction. Ward also provided examples of potential PM&E measures that may be aggregated in the settlement alternative and acknowledged that it is too early to describe the action alternatives in much detail.

Richard Roos-Collins asked if the United States Forest Service is considered to have mandatory conditioning authority in this proceeding. Ward explained that they would have a regulatory role because they have land within and adjacent to the Project boundary. Richard also asked that the Plenary Group be provided with a copy of the agreement or license amendment between DWR and Department of Fish and Game for instream flows for the Feather River. Patrick Porgans asked if mitigation measures would only be considered if they could be accomplished inside the Project boundaries. Ward explained that typically most mitigation measures would be within the Project boundaries, but it was not a hard and fast rule. Patrick inquired whether enhancements carry the same weight as mitigation measures for FERC. Jim Fargo, representing FERC explained that FERC does not differentiate between protection, mitigation or enhancement measures but uses the terms somewhat interchangeably with all given equal weight.

The participants discussed the screening criteria for PM&Es. Eric Theiss asked who defines “clear, definable long-term benefit” and questioned the need for screening criteria. Ward explained that the Collaborative process would define the screening criteria. Eric stated that he would prefer to have no screening criteria. Ward explained that PM&Es need to be subject to scrutiny to ensure that those measures chosen for evaluation meet the goals and objectives for the resources in question and fit with the Project’s purpose and needs. Richard Roos-Collins noted that if DWR proceeds with a plan that causes concern for NMFS under their Section 18 authority, then DWR’s risk of not successfully obtaining their new license goes up. Ward concurred with Richard’s comment and agreed that it is in DWR’s best interest to work with the mandatory conditioning agencies to daylight their potential conditions early in the process and work toward a mutually acceptable settlement.

Ward concluded his presentation with a discussion on baseline under the Federal Power Act and other applicable laws. Ward explained that baseline was a comparison standard from which to measure project impacts. Sharon Stohrer pointed out that no discussion on “baseline” as used to meet Clean Water Act regulations was included. Ward agreed that Clean Water Act baseline standards need to be added.

Richard Roos-Collins noted that throughout the presentations there are a number of instances where Plenary activities or decisions are noted and suggested that it would be helpful if all of these decision points could be grouped together. Rick Ramirez agreed that for the next Plenary Group presentation, a separate graphic showing all of those points in one location could be developed.

Introduction to Negotiation Framework

Rick Ramirez and Anna West, consultant to DWR from Kearns & West, provided an Introduction to Negotiation Framework presentation. The presentation is included as Attachment 12 to this summary. After briefly outlining the proposed procedure for developing a framework, Anna asked for volunteers to form a Process Task Force that would develop additional Settlement Process Protocols and a Framework for Negotiation to be brought back to the Plenary Group for consideration. The Process Task Force members include: Nan Nalder, Craig Jones, Ken Kules, Mike Meinz, representative from DWR, Mike Melanson, Ward Tabor, Richard Roos-Collins, Cathy Hodges (possibly), representative from the Butte County Counsel office; representative from U.S. Fish & Wildlife Service, and Eric Theiss. Sharon Stohrer asked that she be kept apprised of the Task Force activities and indicated that she would participate if possible. Eric Theiss asked if the Task Force could hold morning meetings in Sacramento. Ward Tabor reminded the group that the first Plenary Process Protocols Task Force was able to meet mostly through conference calls. DWR was tasked with setting up the first meeting and preparing the first meeting agenda. Participants agreed that the first meeting of the Process Task Force should take place prior to the next Plenary Group meeting scheduled for November 19, 2002.

Patrick Porgans asked if the plan is to produce one settlement agreement or a series of agreements. Rick Ramirez explained that he prefers one integrated package because it would be hard to agree to bits and pieces. Patrick asked if the agreement would be all-inclusive and approved all at once. Rick responded that DWR would need to see the entire package before agreeing to portions of any agreement.

Michael Pierce stated it was his understanding that socioeconomic issues were to be addressed in study plans developed by the Recreation and Socioeconomics Work Group but only recreation-related economic impacts were ultimately included in the studies. He asked if additional studies would be developed to address Butte County's other socioeconomic issues. Craig Jones, representing the State Water Contractors, reminded the participants that the issues in question are non-jurisdictional under FERC and the Recreation and Socioeconomics Work Group had agreed that they should not be included in the relicensing studies. Rick Ramirez added that DWR's study plans are more comprehensive than any past FERC process and he felt comfortable that the study plans would provide adequate information for the application. Richard Roos-Collins suggested that the Plenary Group should focus on developing mitigation measures that are needed to address specific Project impacts and may not be able to address every issue that has been raised.

Roger Masuda representing Butte County used the example of cold water temperatures at agricultural diversions and the negative impact on rice production as an issue that needs to be addressed when developing mitigation but that didn't seem to have a 'home' within the appropriate work groups. He suggested that the issue crosses over several work groups including Environmental, Engineering and Operations, and also has a socioeconomic aspect and is concerned that it will not receive adequate consideration. He suggested that it might be appropriate to convene an additional socioeconomic forum to address such issues. Rick Ramirez requested a letter from Butte County outlining their socioeconomic issues including the water temperature/rice production concerns. Craig Jones stated that most of the County's socioeconomic issues discussed to date are not impacts resulting from operations of the Oroville Facilities. Roger Masuda asked for assurance that if new issues come up later, they are looked at. Ward Tabor responded that the process allows for new issues to be raised and dealt with appropriately by the Collaborative.

Update on F9 NMFS Issue Resolution Process

The Facilitator updated the participants on progress made toward resolving outstanding issues related to Study Plan F9 and reminded the group that the issues being discussed were outlined in a letter from NMFS to DWR dated July 12, 2002. She reported that a genetics-focused meeting was held on October 10 and included fishery genetics experts from NMFS, USFWS, and University of California, Davis' Bodega Marine Lab. Participants at the meeting discussed a number of issues related to additional testing suggested by NMFS and concluded that further testing of wild fish stocks in the Feather River would not be useful however, an expanded sampling program at the hatchery would be developed with samples archived for possible later use. The group also addressed Eric Theiss' question regarding the value of developing a model to evaluate straying and genetic drift by indicating that development of such a model would be assumption-laden and not possible at this time. The Facilitator informed the participants that another technical input task force meeting for F9 is scheduled for October 24. She also indicated that DWR has drafted a response to the NMFS July letter and has asked for a response from NMFS outlining the remainder of their unresolved issues.

The Facilitator indicated that while F9 still has some unresolved issues for NMFS, some tasks in the study plan have been initiated. Eric Theiss informed the Plenary Group that he has decided to write a new hatchery study plan but it would take some time to prepare and he could not identify when it might be available. Mike Mainz with California Department of Fish and Game expressed

concern with NMFS writing a new SP-F9 since the majority of the Environmental Work Group had already approved the original plan with many consensus-backed revisions.

Richard Roos-Collins asked if DWR considered F9 approved. Rick Ramirez said he felt that as consensus is defined in the Process Protocols, F9 has been approved. Rick informed the Plenary Group that at NMFS' request, DWR has also initiated the dispute resolution process described in the protocols. Richard Roos-Collins suggested it seems problematic to move forward without NMFS agreement on an issue central to their mandatory condition authority even with a consensus from the Collaborative in accordance with the Process Protocols. Eric Theiss asked what the difference is between dispute resolution and issue resolution and asked why the dispute wasn't elevated to FERC. The Facilitator stated that F9 is in a dispute resolution process whereby we are trying to resolve the outstanding issues that lead to the dispute. Richard Roos-Collins read the dispute resolution protocols aloud to the Plenary Group and identified the dispute resolution regarding F9 as in Step 3 of the resolution process. Elevation of the dispute to FERC is the last step and not to be taken until all other avenues of dispute resolution are exhausted. Roger Masuda said that if F9 is revised by NMFS or anyone else, it should come back to the Plenary Group. The participants agreed that if substantive revisions are made to any study plan, the Plenary Group should reconsider the plan.

Next Steps

Plenary Group participants agreed that the next Plenary Group meeting would be an evening meeting in Oroville beginning at 4 p.m. and ending at 9 p.m. Due to the full agenda schedule and the short meeting time, Richard Roos-Collins suggested that all presentation slides be distributed to the participants prior to the November 19 Plenary Group meeting. The presenter would then provide a brief summary at the meeting thereby allowing more time for questions and answers. Rick Ramirez suggested that to save time during the meeting, we eliminate the meal break and instead serve sandwiches that can be eaten during the meeting. The participants agreed to both suggestions. At the request of Eric Theiss and Michael Pierce, the participants also agreed to include the following items on the November 2002 agenda:

- Discuss process for meeting cancellation and possible effect on deliverables (Eric Theiss)
- Discuss teleconference capabilities – potential to provide a better conference call system (Eric Theiss)
- Discuss the need for a special forum to consider non-recreational socioeconomic issues (Michael Pierce)
- Discuss the current meeting summary distribution and approval process (Eric Theiss)

Michael Pierce read a statement from Butte County requesting better communications between DWR and the County. He told the Plenary Group that there had been some recent miscommunications and asked that any questions DWR has regarding Butte County comments should be addressed directly to Butte County.

Next Meeting

The Plenary Group agreed to meet on:

Date: November 19, 2002
Time: 4 p.m. – 9 p.m.
Location: To be determined

Action Items

The following list of action items identified by the Plenary Group includes a description of the action, the participant responsible for the action and item status.

Action Item # P100: Query database to generate report indicating which studies will have results available in December

Responsible: DWR

Due Date: November 19, 2002

Action Item # P101: Provide copy of agreement or license amendment for in-stream flow requirements.

Responsible: DWR

Due Date: November 19, 2002

Action Item # P102: Convene Process Task Force prior to next Plenary Group meeting.

Responsible: DWR

Due Date: Prior to November 19, 2002

Action Item # P103: Provide presentation graphics to participants prior to next Plenary Group meeting and track Plenary decisions that need to be made in one location.

Responsible: DWR

Due Date: November 12, 2002

Action Item # P104: Provide addendums and/or revisions related to F9 discussion in September meeting summaries to Facilitator.

Responsible: NMFS and DFG

Due Date: November 19, 2002